

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

JUDIE NEEDELS, Individually and as	:	APPEAL NO. C-080893
Mother and Next of Kin of ZACHARY	:	TRIAL NO. A-0507688
NEEDELS, Deceased,	:	
and	:	<i>JUDGMENT ENTRY.</i>
KEN HUTCHENS,	:	
Plaintiffs-Appellants,	:	
vs.	:	
SEVEN HILLS OB-GYN ASSOCIATES,	:	
INC., d/b/a SEVEN HILLS WOMEN’S	:	
HEALTH CENTERS,	:	
ROBERT STEPHENS, M.D.,	:	
ERIC STAMLER, M.D.,	:	
and	:	
CYNTHIA DEHLINGER, CNM, CNP,	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Plaintiffs-appellants Judie Needels, individually and as mother and next of kin of Zachary Needels, deceased, and Zachary’s father, Ken Hutchens, (“the Needelses”)

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

appeal from the trial court's overruling of their motion for a new trial following a jury verdict against them. The Needelses had brought this wrongful-death lawsuit against defendants-appellees Seven Hills OB-GYN Associates, Inc., d.b.a. Seven Hills Women's Health Centers, Robert Stephens, M.D., Eric Stamler, M.D., and Cynthia Dehlinger, a nurse midwife, claiming that their negligence had resulted in the stillborn delivery of Zachary.

After the trial court had instructed the jury, but before it had begun its deliberations, defense counsel alerted the Needelses and the trial court that five exhibits in the Needelses' evidence binder had not been properly admitted by the trial court. The trial court ultimately permitted the exhibits to be sent to the jury.

The jury began deliberations at 1:30 p.m. But without the knowledge of the Needelses or the trial court, defense counsel had instructed the bailiff to enter the jury room and to remove the Needelses' binder because it also contained Judie Needels's handwritten notes. The notes had not been offered or moved into evidence. The trial court ultimately found that the defendants had waived their argument that the notes were inadmissible under Evid.R. 803(5). The trial court personally returned the Needelses' binder to the jury at 2:30 p.m. One hour later, the jury informed the trial court that it had reached a decision.

The jury returned a verdict for the defendants and indicated by special interrogatory that while Dr. Stephens had been negligent, his negligence had not been the proximate cause of Zachary's death. The Needelses moved for a new trial based upon the exhibit irregularities. The trial court overruled the motion and this appeal ensued.

In their sole assignment of error, the Needelses assert that the trial court erred in overruling their motion for a new trial. The Needelses moved for a new trial under Civ.R. 59(A)(1), which provides that a new trial may be granted where there have been

irregularities in the proceedings that have prevented the movant from having a fair trial. They essentially contend that an irrebutable presumption of prejudice arises when exhibits are withheld from the jury.²

While Civ.R. 59(A)(1) provides that a new trial may be granted if an irregularity in the trial proceedings can be shown to have prevented the moving party from having received a fair trial, the decision to grant the motion rests within the sound discretion of the trial court.³ Thus, a reviewing court's role is limited to a review of the trial court's decision for an abuse of that discretion.⁴

To succeed on this assignment of error, the Needelses must demonstrate that, in making its decision, the trial court exhibited an attitude that was "unreasonable, arbitrary or unconscionable."⁵ In applying this standard, a reviewing court "is not free to substitute its judgment for that of the trial judge."⁶ Rather, if the trial court's exercise of its discretion exhibits a sound reasoning process that supports its decision, we will not disturb the court's determination.⁷

Upon learning of irregularities with the jury exhibits, the trial court acted quickly in this case to attenuate any prejudice to the parties by first reviewing the Needelses' exhibits and by later personally returning the exhibits to the jury. After the Needelses moved for a new trial, the trial court reviewed the parties' written memoranda, conducted a lengthy hearing on the motion, and gave its explanation for overruling the motion. After thanking trial counsel for their assistance in resolving a unique trial situation, the trial

² See, e.g., *Texlon v. Smart Media of Delaware, Inc.*, 9th Dist. Nos. 22098 and 22099, 2005-Ohio-4931, at ¶14-17.

³ See *Rohde v. Farmer* (1970), 23 Ohio St.2d 82, 93, 262 N.E.2d 685; see, also, *Koch v. Rist*, 89 Ohio St.3d 250, 251, 2000-Ohio-149, 730 N.E.2d 963.

⁴ See *id.*; see, also, *Frank v. Kett Tool Co.* (Aug. 14, 1996), 1st Dist. No. C-950572.

⁵ *State v. Adams* (1980), 62 Ohio St.2d 151, 157, 404 N.E.2d 144.

⁶ *Berk v. Matthews* (1990), 53 Ohio St.3d 161, 169, 559 N.E.2d 1301.

⁷ See *AAAA Enterprises, Inc. v. River Place Community Urban Redevelopment Corp.* (1990), 50 Ohio St.3d 157, 161, 553 N.E.2d 597.

court found that the “overwhelming majority” of the Needelses exhibits had been relevant only to the issue of damages and not to negligence, that the jury had possessed the exhibits for over an hour before it returned a verdict,⁸ and that the jury had returned a finding of negligence as to Dr. Stephens. It, therefore, concluded that the exhibit irregularity had not tainted the jury’s verdict.

As the trial court’s exercise of its discretion exhibited a sound reasoning process, and as nothing else in the record suggests that the trial court abused its discretion in refusing to grant a new trial based upon irregularities in the proceedings, the assignment of error is overruled.

Therefore, the judgment of the trial court is affirmed.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

PAINTER, P.J., CUNNINGHAM and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on September 2, 2009
per order of the Court _____
Presiding Judge

⁸ Compare *Texlon* at ¶12 (jury never received one party’s economic report), and *Jimenez v. Heyliger* (D.P.R.1992), 792 F.Supp. 910, 916 (jury never received one of the drawings made by “competing experts”).